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Attorneys for Defendant  
THE CHARLES SCHWAB DISABILITY PLAN,  
erroneously sued as THE CHARLES SCHWAB  
LONG TERM DISABILITY PLAN

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

BRIAN DEDIEMAR,  
Plaintiff,

vs.

THE CHARLES SCHWAB LONG TERM  
DISABILITY PLAN,  
Defendant.

) Case No. C 07-02982 VRW

) **DEFENDANT'S CASE MANAGEMENT  
STATEMENT**

) Date: October 25, 2007

) Time: 3:30 p.m.

) Ctrm: 6, 19<sup>th</sup> Floor

) Judge: Hon. Vaughn R. Walker

Defendant THE CHARLES SCHWAB DISABILITY PLAN ("the Plan"), unable to  
obtain sufficient information to prepare and submit a Joint Case Management Statement,  
hereby separately submits the following Case Management Statement.

**1. Jurisdiction and Service**

Jurisdiction is based on federal question under ERISA, 29 U.S.C. § 1132(e). No  
issues exist regarding personal jurisdiction or venue, and no parties remain to be served.

**2. Facts**

Plaintiff Brian Dediemar ("Dediemar") was a participant in an employee welfare  
benefit plan ("the Plan") offered by his employer, Charles Schwab & Company, Inc.

1 (“Schwab”). The Plan included a group long term disability policy (“LTD Policy”) insured by  
2 Unum Life Insurance Company of America (“Unum”). Dediemar was employed by Schwab  
3 as an IT Manager. He submitted a claim for disability benefits, stating that he had been  
4 unable to work since September 18, 2000. The Plan accepted Dediemar’s claim, and paid  
5 him benefits for the period April 16, 2001 – April 16, 2003. The Plan closed Dediemar’s  
6 claim as of April 2003, based on a Plan provision limiting benefits for disabilities due to  
7 mental/nervous disorders to 24 months (in Dediemar’s case, bi-polar disorder and  
8 depression). Dediemar disputes this decision, and alleges that his disability is due to a  
9 physical condition (brain trauma and memory loss caused by electroshock therapy).

10 In February 2005, Unum (the claims reviewing entity) offered to reassess  
11 Dediemar’s claim. In September 2006, Unum instructed Dediemar to complete and return  
12 an information form. Dediemar alleges that he sent this material to Unum in October 2006.  
13 Unum’s records indicate that Unum never received this information.

14 The principal factual issue in dispute is whether Unum abused its discretion in  
15 determining that Plaintiff is not entitled to benefits after April 16, 2003 under the terms of  
16 the Plan.

### 17 **3. Legal Issues**

18 a. The appropriate amount of judicial deference to the claims decision. See  
19 *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955 (9<sup>th</sup> Cir. 2006).

20 b. Whether Plaintiff is entitled to additional benefits under the terms of the Plan.

### 21 **4. Motions**

22 Defendant anticipates filing a motion for summary judgment.

### 23 **5. Amendment of Pleadings**

24 None.

### 25 **6. Evidence Preservation**

26 Defendant provided Plaintiff with a copy of the Administrative Record in this  
27 matter with its Initial Disclosures.  
28

1           **7. Disclosures**

2           Defendant has served its Initial Disclosures pursuant to FRCP 26(a)(1).  
3           Defendant will disclose the individuals likely to have discoverable information (Unum  
4           employees, Schwab employees and Plaintiff's treating physicians), and provide a copy of  
5           the Administrative Record.

6           **8. Discovery**

7           Defendant submits that the Court's determination as to whether the Plan abused  
8           its discretion is limited to a review of the Administrative Record. Defendant has provided  
9           Plaintiff with the Administrative Record in this matter with its Initial Disclosures,  
10          accordingly, no discovery should be allowed.

11          **9. Class Actions**

12          Not applicable.

13          **10. Related Cases**

14          None.

15          **11. Relief**

16          Defendant contends that, if Plaintiff establishes that he is disabled due to a  
17          physical injury, he will be entitled to recover past benefits, reduced by any applicable  
18          offsets. Defendant further contends that ERISA does not provide for the payment of future  
19          benefits. In addition, the award of attorney's fees in any amount to the prevailing party is  
20          within the sound discretion of the Court.

21          **12. Settlement and ADR**

22          The parties have stipulated to private mediation. A mediation session was held  
23          on October 15, 2007. The matter did not settle, but settlement discussions are continuing.

24          **13. Consent to Magistrate Judge for All Purposes**

25          Defendant does not consent to assignment to a magistrate judge for all  
26          purposes.

27          **14. Other References**

28          The parties do not believe that this case is suitable for reference to binding

1 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

2 **15. Narrowing of Issues**

3 Defendant anticipates that the issues can be narrowed through a motion for  
4 summary judgment.

5 **16. Expedited Schedule**

6 Defendant submits that the motions, and the trial (if necessary), should be limited  
7 to the evidence contained in the Administrative Record.

8 **17. Scheduling**

9 Designation of Experts: None

10 Discovery Cutoff: None

11 Hearing of Dispositive Motions: March 2008

12 Pretrial Conference: June 2008

13 Trial: July 2008

14 **18. Trial**

15 Defendant: estimated length of trial: 1 day bench trial.

16 **19. Disclosure of Non-party Interested Entities or Persons**

17 Defendant filed a Certification of Interested Entities or Persons on July 16, 2007,  
18 identifying the Unum Group and Charles Schwab & Company, Inc., as interested entities.

19 **20. Other Matters**

20 None at this time.

21 DATE: October 18, 2007

GREEN & HUMBERT

22  
23 By: /s/ Horace W. Green

HORACE W. GREEN

24  
25 Attorneys for Defendant  
26 CHARLES SCHWAB DISABILITY  
27 PLAN  
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